

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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BANK OF AMERICA, N.A.,

Plaintiff,

-against-

GORDON KESSLER,

Defendant.

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**ORENSTEIN, MICHAEL L., U.S. Magistrate Judge:**

Pursuant to the Order of Referral of District Judge Seybert, this Court has reviewed plaintiff's motion for entry of a default judgment against defendant. *Order of Referral*, dated August 7, 2009, Seybert, D.J.

This Court reports and recommends that the action be denied without prejudice.

The affidavit of service of the summons and complaint is defective. The affidavit does not reflect proper and complete service on the individual defendant pursuant to Federal or New York State Law. Fed. R. Civ. P. 4(e)(1) and (2). *Exhibit A to Letcher Declaration*, dated July 17, 2009.

**OBJECTION**

Any objections to this Report and Recommendation must be filed with the Clerk of the Court with a copy to the undersigned within ten (10) days of receipt of this Report. Failure to file objections within this period waives the right to appeal the District Court's Order. *See* 28 U.S.C. 636 (b)(1); Fed. R. Civ. P. 72, 6(a), 6(e); *Beverly v. Walker*, 118 F.3d 900, 902 (2d Cir. 1997); *Savoie v. Merchants Bank*, 84 F.3d 52, 60 (2d Cir. 1996); *IUE AFL-CIO Pension Fund v.*

*Herrmann*, 9 F.3d 1049, 1054 (2d Cir. 1993); *Roldan v. Racette*, 984 F.2d 85, 89 (2d Cir. 1993);  
*Frank v. Johnson*, 968 F.2d 298, 299 (2d Cir. 1992).

Dated: Central Islip, New York  
August 20, 2009

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MICHAEL L. ORENSTEIN  
United States Magistrate Judge